

Similarly, the Award's discussion of "trouble reports" at page 63¹⁹ should be read to apply consistent with the *UNE Remand Order*, and that the Award is simply incorporating a portion of the FCC Order. To the extent that something more was intended, there is no basis for the 'trouble report' obligation, as it was not raised by any party and is not the subject of a DPL. SWBT opposes any requirement independent of the FCC 'trouble report' requirement, absent an opportunity to address the issue.

III. COSTS, RATES AND PRICES

A. **The Award Erred By Not Allowing SWBT To Recover Its Costs²⁰**

Providing DSL-capable loops requires SWBT to incur costs, for which it should be properly compensated. SWBT's proposed rates for Loop Qualification, Conditioning and DSL-capable loops to Texas CLECs are consistent with its obligations under FTA Section 251(c)(3) and applicable FCC Orders, including, but not limited to prior FCC Orders on Advanced Services.²¹

B. **The Award's Denial Of Any Compensation For Manual Loop Qualification Is Arbitrary And Without Basis²²**

Without explanation or citation to evidence or law, the Award determines that SWBT should get *nothing* for providing manual Loop Qualification services to CLECs.²³ Not only is there no basis for the Award's conclusion on this point, but there is no

¹⁹ DPL No. 15. The subject matter is addressed in Covad's DSL Appendix, Section 7.3.5 and Rhythms' DSL Appendix, Section 6.5.1.

²⁰ DPL Nos. 18, 19(b), 21, 26-32, and 35. This subject is addressed in Covad's DSL Appendix, Sections 11.1 - 11.4 and Rhythms' DSL Appendix, Sections 8.1 - 8.4.

²¹ First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 98-147, FCC 99-48 (March 31, 1999) ("FCC 99-48") and Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket 98-147, 13 FCC Rcd 24012 (1998) ("98-147").

²² This subject is addressed in Covad's DSL Appendix, Section 11.2 and Rhythms' DSL Appendix, Section 8.4.

²³ See Award, p. 76 bottom.

suggestion in the pertinent portion of the Award that either Petitioner requested such a manual process be performed for free. In fact, the Award acknowledges the difficulty and cost of this process at page 67, footnote 242. SWBT's proposed rate for this service was \$14.95.²⁴

Later in the Award, the Arbitrators suggest that SBC agreed to eliminate any "extra charge" for a number of manual processes, citing the *Merger Order*. (Award, p. 103). However, this citation is incomplete, as the Conditions Appendix of the *Merger Order* makes clear that the *Merger Order* not limit SWBT's right "to charge telecommunications carriers for the cost of providing loop make-up information...." (emphasis added)²⁵ This right to charge for costs incurred is required by FTA Section 252(d) and 251(c)(3). The Award does not explain how "free" manual Loop Qualification can be justified in the context of the FTA.

Manual Loop Qualification is a costly process, as it identifies the *actual* characteristics of loops, after reviewing the outside plant records for the presence of bridged tap, load coils and repeaters. This work is unique to a CLEC's request, involving particular pairs over which the CLECs services can be provisioned.²⁶ In fact, SWBT's proposed rate was actually below its costs,²⁷ as SWBT was anticipating a partially mechanized Loop Qualification process when it offered its proposed rate.²⁸

²⁴ Aufinbau Rebuttal, p. 14, SWBT Ex. 6.

²⁵ See *Merger Order*, para. 384 and Appendix C, Section IX, para. 20.c, footnote 45 and para. 35.

²⁶ Deere Direct, p. 16, SWBT Ex. 2. Cost support for this service is set forth at Schedules 2 and 3 of Mr. Moore's Direct Testimony, SWBT Ex. 4A; Schedule 2 of Mr. Fuess' Rebuttal, SWBT Ex. 8A, both of which were subsequently amended in SWBT Ex. 38 and 42.

²⁷ June 4, 1999 Tr. at 1261-1262.

²⁸ June 4, 1999 Tr. at 1262, lines 15-16.

Mr. Deere explained this at hearing, stating in reference to employees doing the work:

They actually took a large set of drawings, sometimes called side-by-sides, and they start at the customer's premise or the terminal that serves the customer's premise, and work their way back to the central office, reading off of that the size of the cable, the cable number, the counts that are available and the gage (sic), et cetera, basically a blueprint type of tabulation made until they get to the end. When they get back to the central office, then they will provide information that shows the loop makeup in terms of the length of 26-gage (sic) cable, the length of 24-gage (sic) cable, so on. There's a place on there to mark if there are any load coils, how many; if there's bridged taps identified, how much.²⁹

Manual Loop Qualification is clearly more than simply providing readily available information to a requesting CLEC.³⁰ Thus, SWBT's rate of \$14.95 is appropriate and fair, and the Award's finding that SWBT should receive no compensation has no basis in the evidence, ignores recent FCC discussions of such issues, as well as FTA Section 252(d) and Section 251(c)(3). The Award and the Agreements should be revised accordingly.

C. The Award Ignored The Unique Nature Of Each Conditioning Request And The Cost Causer Principle (DPL No. 29)³¹

The Award drastically reduced SWBT's proposed Conditioning rates by applying factors of 1/25 for loops over 18,000 feet in length and 1/50 for shorter loops. This ignores the evidence that Conditioning is only performed at the CLEC's request and the potential harm to the PSTN of 'over-conditioning'.

²⁹ June 4, 1999 Tr. at 1335, line 25 to 1336, line 13.

³⁰ Deere Supplemental Rebuttal, p. 11, SWBT Ex. 26.

³¹ This subject is addressed in Covad's DSL Appendix, Section 11.4 and Rhythms' DSL Appendix, Section 8.3.

As Mr. Moore and Mr. Deere described in their testimonies,³² Conditioning involves preparing and issuing an order, traveling to the outside plant locations and preparing underground, buried or aerial sites for work and then performing the actual work to disconnect each interfering device.³³ To condition a loop, SWBT performs actual work for which SWBT is entitled to recover under the FTA.³⁴

The FCC recognized the labor and expense required to condition an existing standard voice grade loop for DSL service, making clear that the requesting CLEC would have to bear the cost for such request:

Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. For example, if a competitor seeks to provide a digital loop functionality, *such as ADSL*, and the loop is *not currently* conditioned to carry digital signals, but it is technically feasible to condition the facility, the incumbent LEC must condition the loop to permit the transmission of digital signals...*The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning.* (emphasis added) (FCC footnotes omitted)³⁵

Last Spring, the FCC echoed its finding from 1996. In its March 31, 1999 Order, the FCC stated, "Conditioning' loops to remove those impediments (excessive bridged taps, loading coils and other devices)...*can be expensive.*"³⁶ Last summer, the FCC stated that such Conditioning is "time consuming" and a "costly process,"³⁷ and the

³² Deere Rebuttal, p. 14, SWBT Ex. 7; Moore Rebuttal pp. 18-19, SWBT Ex. 8; and Moore Direct, p. 3, Schedule 2, SWBT Ex. 4A, 8A, 38.

³³ *Id.*, see also June 4, 1999 Tr. at 1253.

³⁴ Deere Rebuttal, p. 14, SWBT Ex. 7.

³⁵ First Report and Order, FCC Docket No. 98-98 (August 8, 1996), at ¶ 382.

³⁶ FCC 98-48. (emphasis added)

³⁷ FCC 98-147, August 7, 1998, footnote 316.

Missouri Commission found that Conditioning activities "undeniably result in real costs to SWBT," and ruled that SWBT should be compensated for such work.³⁸

1. SWBT Will Never Recover Its Costs If A Factor Of 1/25 or 1/50 Is Used

The effect of the Award's logic on Conditioning costs is that it does not permit SWBT to recover its costs. Decreasing rates by the 1/25 or 1/50 multiple used by the Arbitrators means that SWBT will not be compensated for the remaining 24/25 or 49/50 of its costs (which the Award recognized).³⁹ This is because there is no basis for believing that another 24 or 49 CLECs (as applicable) will request Conditioning of the binder group in question and then pay for it. The Award leaves unanswered how SWBT would be compensated if it follows the Award's direction and conditions an entire binder group. Once that binder group is conditioned, it is unclear whether the Commission will permit SWBT to be paid by subsequent CLECs who order a loop out of that conditioned binder group, yet who do not need to order Conditioning at that point, as the loops would already be conditioned. Absent those additional 24 or 49 CLECs requesting and paying for Conditioning, SWBT will not be compensated for the costs which the Award acknowledges actually occur. This is contrary to the dictates of FTA Section 252(d) and Section 251(c)(3).

2. Such Artificially Low Rates Create The Incentive To Seek Unneeded Conditioning

Permitting any party to cause a cost and not pay for it creates an undisciplined environment which results in costs being created unnecessarily (as the cost-causer has

³⁸ *Petition of Sprint Communications Company, L.P. for Arbitration of Unresolved Interconnection Issues Regarding xDSL with Southwestern Bell Telephone Company*, Case No. TO-99-461, August 4, 1999 at p. 5, attached to SWBT's Post-Hearing Brief as Attachment A.

³⁹ Of course, Conditioning entire binder groups was not addressed in SWBT's submitted cost studies. Such Conditioning would likely cost more than the itemized Conditioning proposed by SWBT.

little incentive not to cause a cost).⁴⁰ This leads to an inefficient allocation of telecommunications resources and an inefficient telecommunications infrastructure. A tangible example of this would be the "over conditioning" of the SWBT network that would occur if CLECs order more Conditioning than necessary. CLECs allowed to order Conditioning at a fraction of its actual cost will leave them undisciplined by cost-causer principles. This may cause SWBT to remove designed network components such as bridged tap more often than necessary, eliminating the benefits that accompany the use of such network components. This will pose a risk of service delays to end-users who receive voice service via a loop served by bridged tap, as well as additional costs to SWBT. That is, components such as bridged tap are in the network to facilitate current services. By definition, removal of those devices makes the network less efficient for all services except the DSL being provided. For this reason alone, excess Conditioning should be discouraged. Such "over conditioning" is not in the public interest and not consistent with SWBT's policy of not proactively Conditioning.⁴¹

3. No Basis For Believing Conditioning Of Whole Binder Groups Is Effective

The Award wrongly presumes that Conditioning whole binder groups is effective. This ignores the various types of DSL-based services that are and will be offered by CLECs, and that devices that need to be conditioned are scattered throughout SWBT's network. As a result, Conditioning a binder group where some interferers exist may not eliminate all interferers that need to be removed. As an example, repeaters are service

⁴⁰ In a similar situation, the Missouri Commission found that the burden of Conditioning costs should be borne by the requesting party, characterizing it as a matter of risk sharing. *Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company*, Case No. TO-99-370, Issue Date: June 15, 1999, pp. 10-11, attached to SWBT's Post-Hearing Brief as Attachment C.

⁴¹ June 4, 1999 Tr. at 1379-1380, 1382 and 1384.

specific, and not attached collectively to a binder group. Clearly, there is no basis for assuming SWBT can remove 25 or 50 repeaters at one time.

Moreover, where the end-users will be served will also determine whether any Conditioning can be done at the same location. It is literally impossible to know whether other CLECs will need the same Conditioning requested by another CLEC, at the same time and in the same place. Without such information, there is no public benefit to Conditioning each twisted pair in a binder group. The Missouri Commission rejected a similar argument in June.⁴²

For these reasons, dividing SWBT's costs by any multiple ignores the realities of the network, results in an extreme underestimation in cost and prevents SWBT from recovering its costs. The Commission should not apply such multiples in any future cost proceeding on Conditioning rates.

D. Too Much Conditioning May Harm the Public Switched Telephone Network ("PSTN")

The Award's proposed mass Conditioning also presumes that the so-called interfering devices do not benefit the network today. They do. If load coils are present, it is because they are required to provide voice grade service to customers. Load coils modify the electrical characteristics of the loop to allow better quality voice frequency transmission and improved line supervision characteristics over extended distances. It makes no sense to remove the load coils from loops that are not used to provide DSL services. This would make the loops less suitable or even unusable for traditional voice services. Likewise, bridged tap is in place in order to make more efficient use of cable

⁴² The Missouri Commission stated: "Without some firm knowledge about how many loops will be leased and how long they will be leased, it is impossible to devise a(n) alternative recurring charge that will fully compensate SWBT..." *Petition of Broadspan Communications, Inc. for Arbitration of Unresolved Interconnection Issues Regarding ADSL with Southwestern Bell Telephone Company*, Case No. TO-98-370, Issue Date: June 15, 1999, p. 9, Attached to SWBT's Post-Hearing Brief as Attachment C.

facilities. To remove the bridged tap without a reliable forecast of DSL services will reduce the ability of SWBT to make efficient use of its facilities to serve its basic voice grade customers.⁴³

E. All Digital Loop Rates Should Remain 'As Is' Prior to Additional Cost Proceeding, Subject to True Up⁴⁴

The Award, at pages 87-88, sets interim rates subject to true up after an additional cost proceeding is completed. Although the Award finds that, "The underlying loop facility used for xDSL services is *equivalent* to an analog or digital loop," (emphasis added), the Award sets interim rates for digital xDSL loops that are different than other digital loops (e.g., the same 2-wire digital (ISDN) loop provided for in the UNE Appendix of the T2A. This creates an administrative burden, as the Award requires SWBT to create separate 'NC/NCI' codes to delineate xDSL digital loops from other digital loops when ordering. Digital loops generally 'flow-through' today, as Loop Qualification is not required for such loops. Creating a new DSL-specific digital loop will require additional ordering and billing systems programming. Until this programming is completed, CLECs will not have the benefit of the current flow-through of digital loop orders. Given that the Arbitrators found digital loops to be the same whether used for xDSL or other services, and given that there is a true-up provision, it is appropriate that the rates be the same until the additional cost proceeding is completed.

⁴³ Deere Rebuttal, pp. 12-13, SWBT Ex. 7. See also, discussion at hearing on the benefits of bridged tap, June 4, 1999 Tr. at 1343.

⁴⁴ This subject is addressed in Covad's DSL Appendix, Section 11.1 and Rhythms' DSL Appendix, Section 8.1.

F. Shielded Cross-Connects Should Only Be Offered for ADSL (DPL Nos. 28(a) and 28(b))⁴⁵

SWBT believes that ADSL is the technology that needs the protection of a shielded cross-connect. The Award requires shielded cross-connects for all DSL technologies, even those that are digital in nature. (Indeed, neither Petitioner requested these additional offerings.) Requiring SWBT to offer such a service is burdensome and will not benefit CLECs, as shielded cross-connects are provided in cables containing numerous twisted pair connections. The purpose of allowing a shielded cross-connect option is to allow CLECs to shield their ADSL technologies from disturbance caused by other DSL technologies. Allowing all DSL technologies to be placed within shielded cross-connects defeats the purpose of providing a shielded cross-connect option, as it will "bunch" interfering technologies together. The Commission should not require it and should remove all but ADSL-based shielded cross-connects from the proposed Agreements.

G. Conclusion – Costs and Rates

SWBT supports the spread of high tech services to all customers, but not at the expense of SWBT providing free Loop Qualification and subsidizing the Conditioning of the PSTN. SWBT certainly should be able to recover the costs caused by requests for Loop Qualification and Conditioning of particular loops. Various FCC orders contemplate such compensation, as has the Missouri Commission. The Commission should adopt SWBT's rates and costs methodology which allow recovery of costs in the manner in which those costs are incurred, consistent with Commission requirements and the FTA.

⁴⁵ This subject is addressed in Covad's DSL Appendix, Section 11.3 and Rhythms' DSL Appendix, Sections 3.6 and 8.2.

IV. INTERVALS⁴⁶

A. The Loop Qualification Interval Should Be Consistent With Requirements Established In Project No. 16251⁴⁷

The Commission ordered in its December 16, 1999, Open Meeting that SWBT would provide Loop Qualification Information at parity with its retail operation (and its data affiliate once it commenced operations in Texas). In the Award, SWBT was ordered to provide such information in three business days. SWBT had proposed a three-to-five business day interval.

SWBT objects to a three business day interval based on the uncertainty that accompanies the growth of the DSL market. This is especially the case, given the Award's finding that manual Loop Qualification will be free to CLECs. While SWBT currently can provide Loop Qualification sooner than three days, it is likely that there will be times that it will not be able to do so, especially when it is free. It is more appropriate that SWBT's interval be set at the three-to-five day interval, with a parity obligation attached. A parity requirement would insure that CLECs would receive the benefit of any shorter intervals provided SWBT's retail operations or data affiliate. For this reason, SWBT urges the Commission to acknowledge the uncertain nature of future Loop Qualification requests and establish a Loop Qualification interval of three-to-five business days, with a parity obligation should the interval be shorter for SWBT retail or its data affiliate.

⁴⁶ DPL Issues 15-22.

⁴⁷ This subject is addressed in Covad's DSL Appendix, Section 5.4 and Rhythms' DSL Appendix, Section 6.2.4.

V. PERFORMANCE MEASURES⁴⁸

Although performance measures will be addressed in a future filing in these dockets, it is essential that the Commission understand that the consequence of not categorizing DSL-capable loops by length, as the Award requires. All copper-based DSL technologies are recognized as being subject to linear or exponential service denigration as loop lengths increase. Such services are also more vulnerable to interference from other digital signals as the loop length increases. Therefore, longer loops are more likely to have more maintenance and repair requests, and those requests are likely to require greater expenditures of time to diagnose and repair network problems. Without categorizing loops by length, the average for maintenance and repair intervals are likely to be longer. Performance measures that include all DSL-capable loops should be correspondingly longer as well. SWBT should not be penalized due to the additional demands of longer loops. As a result, SWBT may seek to change performance measures to accommodate the inclusion of longer loops in any performance measures.

VI. CONCLUSION

The Commission should use these dockets to establish the "rules of the road" for efficient and fair interconnection among DSL providers and SWBT. To do this, the Commission should recognize and coordinate with the FCC's requirements for systems enhancements, as uniformity across as many states as possible will lead to efficiencies for both CLECs and SWBT. In addition, the rates established in the Award, and the methodologies for future hearings on rates, must be revised, as they are now

⁴⁸ This subject is addressed in Covad's DSL Appendix, Section 12.1 and Rhythms' DSL Appendix, Section 10.0.

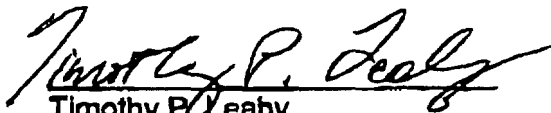
confiscatory, create artificial incentives and are contrary to the FTA. SWBT respectfully requests that the Award and the Agreements be revised or rejected in part, consistent with the arguments made in these Comments.

Finally, SWBT respectfully submits that it is entitled to a rehearing to brief matters relied on in the Award to which the parties have not had an opportunity to respond. Additional briefing is required as a prerequisite to compliance with the FTA and the Commission's own procedural rules.

SWBT asks for this and any other relief, consistent with SWBT's Comments.

Respectfully Submitted,

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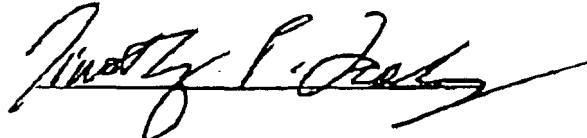
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CERTIFICATE OF SERVICE

I, Timothy P. Leahy, Senior Counsel, for Southwestern Bell Telephone Company, certify that a copy of this document was served on all parties of record in this proceeding on the 6th day of January, 2000 in the following manner:

By hand delivery, facsimile and/or by U.S. Mail.



ATTACHMENT 25: xDSL**1.0 Introduction**

- 1.1 This xDSL Attachment sets forth the unbundled xDSL-Capable Loop offerings, and associated rates, terms and conditions, that SWBT will offer to CLEC for CLEC to use in conjunction with its desired xDSL technologies and equipment to provision xDSL services to its end-user customers. CLECs with a pre-existing interconnection agreement with SWBT may utilize this Attachment as a means to order xDSL-capable loops and provide xDSL service or by CLECs negotiating interconnection. The Parties acknowledge and agree that the terms and conditions set forth in this Attachment shall be subject to the final outcome of the following consolidated arbitration proceedings pending before the Texas Public Utility Commission ("Commission"): Petition of Accelerated Connections, Inc., d/b/a ACI Corp. ("ACI") for Arbitration to Establish an Interconnection Agreement with Southwestern Bell Telephone Company ("SWBT"), Docket No. 20226 and Petition of DIECA Communications, Inc., d/b/a Covad Communications Co. ("Covad") for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with SWBT, Docket No. 20272 ("the xDSL Arbitration") as more fully described in Section 10.1 of this Attachment.
- 1.2 When the results of the xDSL Arbitration become final, all of the rates set forth in this Attachment shall be subject to true-up retroactively to the effective date of this Agreement, except as otherwise stated in Section 9.2 of this Attachment.
- 1.3 Nothing in this Attachment shall constitute a waiver by either Party of any positions it may have taken or will take in any pending regulatory or judicial proceeding or any subsequent interconnection agreement negotiations. This Attachment also shall not constitute a concession or admission by either Party and shall not foreclose either Party from taking any position in the future in any forum addressing any of the matters set forth herein.
- 1.4 The Public Utility Commission of Texas ("Commission") is not a Party to this Agreement, including this Attachment, and shall not be bound by any of the duties or obligations hereunder assigned to any referenced "Party" or "Parties". Only those obligations and duties specifically ascribed to the "Commission" will be the responsibility of the Public Utility Commission of Texas, acting in its capacity as an agency of the State of Texas.
- 2.0 Definitions**
- 2.1 For purposes of this Attachment, a "loop" is defined as a dedicated transmission facility between a distribution frame (or its equivalent) in a central office and an end user customer premises.

- 2.2 The term "digital subscriber line" ("xDSL") describes various technologies and services. The "x" in xDSL is a place holder for the various types of DSL services, such as, but not limited to ADSL (asymmetric digital subscriber line), HDSL (high-speed digital subscriber line), JDSL (ISDN Digital Subscriber Loop), SDSL (symmetrical digital subscriber line), UDSL (universal digital subscriber line), VDSL (very high-speed digital subscriber line), and RADSL (rate-adaptive digital subscriber line).
- 2.3 A loop technology that is "presumed acceptable for deployment" is one that either complies with existing industry standards, has been successfully deployed by any carrier in any state without significantly degrading the performance of other services, or has been approved by the Federal Communications Commission ("FCC"), any state commission, or an industry standards body. Loop technologies presumed acceptable for deployment include, but are not limited to those referenced in Appendix A.
- 2.4 A "non-standard xDSL-based technology" is a loop technology that is not presumed acceptable for deployment under Section 2.3 of this Attachment. Deployment of non-standard xDSL-based technologies are allowed and encouraged by this Agreement.
- 3.0 General Terms and Conditions Relating to Unbundled xDSL-Capable Loops**
- 3.1 SWBT agrees to provide CLEC with access to UNEs (including xDSL capable loops) to provide advanced services in accordance with the terms of this Attachment and the general terms and conditions applicable to UNEs under this Agreement.
- 3.2 CLEC's use of any SWBT network element, or of its own equipment or facilities in conjunction with any SWBT network element, will not materially interfere with or impair service over any facilities of SWBT, its affiliated companies or connecting and concurring carriers involved in SWBT services, cause damage to SWBT's plant, impair the privacy of any communications carried over SWBT's facilities or create hazards to employees or the public. Upon reasonable written notice and after a reasonable opportunity to cure, SWBT may discontinue or refuse service if CLEC violates this provision, provided that such termination of service will be limited to CLEC's use of the element(s) causing the violation. SWBT will not disconnect the elements causing the violation if, after receipt of written notice and opportunity to cure, the CLEC demonstrates that their use of the network element is not the cause of the network harm. If SWBT does not believe the CLEC has made the sufficient showing of harm, or if CLEC contests the basis for the disconnection, either Party must first submit the matter to dispute resolution under Section 3.3 of this Attachment. Any claims of network harm by SWBT must be supported with specific and verifiable supporting information.

3.3 Parties to this Attachment agree that unresolved disputes arising under this Attachment will first be submitted to 1) the Commission for expedited consideration under its dispute resolution rules, 2) the FCC if or when it establishes dispute resolution procedures, or 3) alternate dispute resolutions as may be agreed by the Parties.

3.4 Liability

3.4.1 Each Party, whether a CLEC or SWBT, agrees that should it cause any non-standard xDSL technologies to be deployed or used in connection with or on SWBT facilities, that Party ("Indemnifying Party") will pay all costs associated with any damage, service interruption or other telecommunications service degradation, or damage to the other Party's ("Indemnitee") facilities.

3.4.2 SWBT will pay any costs associated with any damages, direct, indirect, or consequential resulting from SWBT's wrongful discontinuance or refusal of service under Section 3.2 of this Attachment.

3.5 Indemnification

3.5.1 Covered Claim: Indemnifying Party will indemnify, defend and hold harmless Indemnitee from any claim for damages, including but not limited to direct, indirect or consequential damages, made against Indemnitee by any telecommunications service provider or telecommunications user (other than claims for damages or other losses made by an end-user of Indemnitee for which Indemnitee has sole responsibility and liability), arising from, the use of such non-standard xDSL technologies by the Indemnifying Party.

3.5.2 Indemnifying Party is permitted to fully control the defense or settlement of any Covered Claim, including the selection of defense counsel. Notwithstanding the foregoing, Indemnifying Party will consult with Indemnitee on the selection of defense counsel and consider any applicable conflicts of interest. Indemnifying Party is required to assume all costs of the defense and any damages resulting from the use of any non-standard xDSL technologies in connection with or on Indemnitee's facilities and Indemnitee will bear no financial or legal responsibility whatsoever arising from such claims.

3.5.3 Indemnitee agrees to fully cooperate with the defense of any Covered Claim. Indemnitee will provide written notice to Indemnifying Party of any Covered Claim at the address for notice assigned herein within ten days of receipt, and, in the case of receipt of service of process, will deliver such process to Indemnifying Party not later than 10 business days prior to the date for response to the process. Indemnitee will provide to Indemnifying Party reasonable access to or copies of any relevant physical and electronic documents or records related to the

deployment of non-standard xDSL technologies used by Indemnatee in the area affected by the claim, all other documents or records determined to be discoverable, and all other relevant documents or records that defense counsel may reasonably request in preparation and defense of the Covered Claim. Indemnatee will further cooperate with Indemnifying Party's investigation and defense of the Covered Claim by responding to reasonable requests to make its employees with knowledge relevant to the Covered Claim available as witnesses for preparation and participation in discovery and trial during regular weekday business hours. Indemnatee will promptly notify Indemnifying Party of any settlement communications, offers or proposals received from claimants.

- 3.5.4 Indemnatee agrees that Indemnifying Party will have no indemnity obligation, and Indemnatee will reimburse Indemnifying Party's defense costs, in any case in which Indemnifying Party's technology is determined not to be the cause of any Indemnatee liability.
- 3.6 Claims Not Covered: No Party hereunder agrees to indemnify or defend any other Party against claims based on gross negligence or intentional misconduct.
- 3.7 Attachment 26 addresses the sections of the Texas 271 Agreement that are "legitimately related" for the purpose of Section 252(i) of the Federal Telecommunications Act of 1996. This Agreement is expressly limited to the item(s) or section(s) into which CLEC MFNs under Section 252(i), as described in Attachment 26.
- 4.0 Unbundled xDSL-Capable Loop Offerings
 - 4.1 SWBT will provide a loop capable of supporting a technology presumed acceptable for deployment or non-standard xDSL technology as described in this Attachment.
 - 4.2 SWBT shall not deny a CLEC's request to deploy any loop technology that is presumed acceptable for deployment, or one that is addressed in Section 4.3 of this Attachment, unless it has demonstrated to the Commission that the CLEC's deployment of the specific loop technology will significantly degrade the performance of other advanced services or traditional voice band services. For the purpose of this section, "significantly degrade" means to noticeably impair a service from a user's perspective.
 - 4.2.1 In the event the CLEC wishes to introduce a technology that has been approved by another state commission or the FCC, or successfully deployed elsewhere, the CLEC will provide documentation describing that action to SWBT and the Commission before or at the time of their request to deploy that technology in Texas. The documentation should include the date of approval or deployment, any limitations included in its deployment, and a sworn attestation that the

deployment did not significantly degrade the performance of other services. The terms of this paragraph do not apply during the twelve-month period described in Section 4.3.

- 4.2.2 If a CLEC request to deploy a loop technology is denied under this Section 4.2, SWBT will disclose to the requesting CLEC complete information with respect to the denial, including the specific reason for the denial, within 48 hours of the denial.
- 4.3 For the 12-month period following the approval of this Agreement by the Commission, a CLEC may order loops other than those loop technologies presumed acceptable for deployment for the provision of service in Texas on a trial basis, without the need to make any showing to the Commission. Each technology trial will not be deemed successful until it has been deployed without significant degradation for 12 months or until national standards have been established, whichever occurs first.
 - 4.3.1 CLEC's deployment of non-standard xDSL technologies as described in Section 2.4 under Section 4.3 of this Attachment during the interim period by itself shall not be deemed a successful deployment of the technology under the FCC's Order issued on March 31, 1999 in CC Docket No. 98-147, FCC 99-48.
 - 4.3.2 If a loop technology is deployed without significant degradation for 12 months, or if national standards for the technology are established, whichever occurs first, the parties should consider the technology to be presumed acceptable for deployment and treated in accordance with Section 2.3 of this Attachment. If there is dispute as to the successful deployment of the technology, either Party may submit the dispute for resolution according to Section 3.3 of this Attachment.
- 4.4 Following expiration of the twelve month period referenced in Section 4.3 above, SWBT will not deny a requesting CLEC's right to deploy new xDSL technologies that do not conform to the national standards and have not yet been approved by a standards body (or otherwise authorized by the FCC, any state commission or which have not been successfully deployed by any carrier without significantly degrading the performance of other services) if the requesting CLEC can demonstrate to the Commission that the loop technology will not significantly degrade the performance of other advanced services or traditional voice band services.
 - 4.4.1 Upon request by CLEC, SWBT will cooperate in the testing and deployment of new xDSL technologies or may direct the CLEC, at CLEC's expense, to a third party laboratory of CLEC's choice for such evaluation.

- 4.4.2 If it is demonstrated that the new xDSL technology will not significantly degrade the other advanced services or traditional voice based services, SWBT will provide a loop to support the new technology for CLEC as follows:
- 4.4.2.1 If the technology requires the use of a 2-Wire or 4-Wire loop that meets the engineering design criteria of a 2-Wire or 4-Wire loop already provisioned by SWBT, then SWBT will provide CLEC a loop capable of supporting the new xDSL technology at the same rates listed for the appropriate 2-Wire and 4-Wire loops and associated loop conditioning as needed. SWBT will supply CLEC with the appropriate ordering procedures within 10 business days of CLEC's request for a loop capable of supporting the new xDSL technology.
- 4.4.2.2 If a new xDSL technology requires a loop type that differs from the engineering design criteria of a 2-Wire or 4-Wire loop already provisioned by SWBT, the Parties shall expend diligent efforts to arrive at an agreement as to the rates, terms and conditions for an unbundled loop capable of supporting the proposed xDSL technology. If negotiations fail, any dispute between the Parties concerning the rates, terms and conditions for an unbundled loop capable of supporting the proposed xDSL technology shall be resolved pursuant to the dispute resolution process provided for in this Agreement.
- 4.4.3 SWBT will not deploy any technology covered by Section 4.4 for its own retail operations, for the retail operations of an affiliate, or to provide service to a third party (whether retail or wholesale) until it has made ordering procedures for the related unbundled loop type, and reasonable rates, terms and conditions for such loop type available to CLEC.
- 4.5 If SWBT or another CLEC claims that a service is significantly degrading the performance of other advanced services or traditional voice band services, then SWBT or that other CLEC must notify the causing carrier and allow that carrier a reasonable opportunity to correct the problem. Any claims of network harm must be supported with specific and verifiable supporting information. In the event that SWBT or a CLEC demonstrates to the Commission that a deployed technology is significantly degrading the performance of other advanced services or traditional voice band services, the carrier deploying the technology shall discontinue deployment of that technology and migrate its customers to technologies that will not significantly degrade the performance of other such services.
- 4.6 The provision of xDSL service on a loop configured on a Digital Loop Carrier (DLC) system will be treated in the same manner as new xDSL technologies addressed in Section 4.3 of this Attachment, unless the CLEC can demonstrate that such configuration meets the requirements by which it would be presumed acceptable for deployment under Section 2.3.

5.0 OSS

5.1 SWBT will provide CLEC with the same access to the operations support systems ("OSS") and/or functions for pre-ordering, ordering, and provisioning xDSL-capable loops that SWBT is providing any other CLEC and/or that SWBT is utilizing to provision its own retail xDSL service. This includes any OSS utilized by SWBT's service representatives or other provisioning personnel. Any provisions relating to OSS in an underlying agreement agreed to between CLEC and SWBT shall govern the Parties' respective rights and obligations with respect to OSS. In addition, SWBT will provide comparable nondiscriminatory xDSL order management.

5.2 Upon request, SWBT will provide mechanized access to a loop length indicator via enhancements to Verigate and Datagate for use with xDSL-based or other advanced services in specific SWBT wire centers in which the CLEC has collocated or has ordered collocation and has advised SWBT of its intent to order xDSL-capable loops. The loop length indicator is an indication of the approximate loop length, based on a 26-gauge equivalent and is calculated on the basis of Distribution Area distance from the central office.

5.3 SWBT, upon request by CLEC for those wire centers where CLEC has collocated or has ordered collocation and has advised SWBT of its intent to order xDSL-capable loops, will provide access to actual loop length (where such information is currently available in any SWBT data base, including back-office systems) at no charge for use with xDSL-based or other advanced services. In such wire centers where actual loop length is not available through a SWBT data base as described above, the CLEC may request actual loop length at the charges shown as "Loop Make-Up Information - Manual" in Section 9.1 of this Attachment.

5.4 To the extent SWBT is technically able to access the following in its retail operations, SWBT will develop and deploy mechanized and integrated OSS that will permit: (1) real-time CLEC access through an electronic gateway to a database that contains the loop makeup information, including theoretical cable length, gauge, presence and number of load coils, presence of repeaters, presence of DLC, and number of disturbers in same and adjacent binder groups; (2) mechanized, flow-through ordering, loop design, and provisioning any xDSL loop type. SWBT, the Commission and competitive local exchange carriers shall jointly pursue, in a timely manner, an industry standard mechanized OSS solution to accessing loop qualification data.

6.0 Service Quality and Maintenance

6.1 SWBT will not guarantee that the local loop(s) ordered will perform as desired by CLEC for xDSL-based or other advanced services, but will guarantee basic metallic loop parameters, including continuity and pair balance. CLEC-requested

testing by SWBT beyond these parameters will be billed on a time and materials basis at Access Tariff 73 rates.

- 6.2 Maintenance, other than assuring loop continuity and balance, on unconditioned or partially conditioned loops in excess of 12,000 feet, will only be provided on a time and material basis as set out elsewhere in this Agreement. On loops where CLEC has requested that no conditioning be performed, SWBT's maintenance will be limited to verifying loop suitability based on POTS design criteria. For loops having had partial or extensive conditioning performed at CLEC's request, SWBT will verify continuity, the completion of all requested conditioning, and will repair at no charge to CLEC any gross defects which would be unacceptable based on current POTS design criteria and which do not result from the loop's modified design.
- 6.3 Each xDSL-Capable Loop offering provided by SWBT to CLEC will be at least equal in quality and performance as that which SWBT provides to itself or to an affiliate.
- 7.0 **Provisioning**
 - 7.1 The provisioning and installation interval for a xDSL-capable loop, where no conditioning is requested, on orders for 1-20 loops per order or per end-user location, will be 5 - 7 business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL-based services, or its affiliate's, whichever is less. The provisioning and installation intervals for xDSL-capable loops where conditioning is requested, on orders for 1-20 loops per order or per end-user customer location, will be 15 business days, or the provisioning and installation interval applicable to SWBT's tariffed xDSL-based services or its affiliate's xDSL-based services where conditioning is required, whichever is less. Orders for more than 20 loops per order or per end-user location, where no conditioning is requested, will have a provisioning and installation interval of 15 business days, or as agreed upon by the Parties. Orders for more than 20 loops per order which require conditioning will have a provisioning and installation interval agreed by the parties in each instance.
 - 7.1.1 Subsequent to the initial order for a xDSL Capable Loop, additional conditioning may be requested on such loop at the rates set forth below and the applicable service order charges will apply; provided, however, when requests to add or modify conditioning are received within twenty-four (24) hours of the initial order for a xDSL-capable loop, no service order charges shall be assessed, but the due date may be adjusted as necessary as agreed to by the parties. The provisioning interval for additional requests for conditioning pursuant to this subsection will be the same as set forth above.

8.0 Spectrum Management

- 8.1 The Parties acknowledge that selective feeder separation is a disputed item in the current xDSL Arbitration proceedings, the results of which will replace this Attachment on a permanent basis. If SWBT uses a selective feeder separation method to manage the spectrum, in all cases, SWBT will manage the spectrum in a competitively neutral manner consistent with all relevant industry standards. In the interim period, SWBT agrees that CLEC's order for an xDSL-capable loop will not be delayed by any lack of availability of a specific binder group or "spectrum exhaust." SWBT shall be under no obligation to provision xDSL-capable Loops in any instance where physical facilities do not exist. If SWBT reconfigures loops into a designated binder group, it shall do so at no cost to CLEC.
- 8.2 CLEC will advise SWBT of the Power Spectral Density ("PSD") mask approved or proposed by T1.E1 that reflects the service performance parameters of the technology to be used. The CLEC, at its option and without further disclosure to SWBT, may provide any service compliant with that PSD mask so long as it stays within the allowed service performance parameters. The CLEC shall provide the PSD mask within which it plans to provide xDSL service at such time as the xDSL-capable loop is ordered. The CLEC shall advise SWBT if the service is changed such that a different PSD mask would be applicable. The CLEC shall abide by standards pertinent for the designated PSD mask type at all times. The CLEC service representatives will provide such identification on the order form.
- 8.3 SWBT agrees that as a part of spectrum management, it will maintain an inventory of the existing services provisioned on the cable. SWBT will assign loops so as to minimize interference between and among advanced services, including xDSL-based services, and other services. In all cases, SWBT will manage the spectrum in a competitively neutral manner consistent with all relevant industry standards regardless of whether the service is provided by a CLEC or by SWBT, as well as competitively neutral as between different xDSL services. Where disputes arise, SWBT and CLEC will put forth a good faith effort to resolve such disputes in a timely manner. As a part of the dispute resolution process, SWBT will, upon request from a CLEC, disclose within 3-5 business days information with respect to the number of loops using advanced services technology within the binder group and the type of technology deployed on those loops so that the involved parties may examine the deployment of services within the affected loop plant.
- 8.4 In the event that a loop technology without national industry standards for spectrum management is deployed, SWBT, CLECs and the Commission shall jointly establish long-term competitively neutral spectral compatibility standards and spectrum management rules and practices so that all carriers know the rules for loop technology deployment. The standards, rules and practices shall be

developed to maximize the deployment of new technologies within binder groups while minimizing interference, and shall be forward-looking and able to evolve over time to encourage innovation and deployment of advanced services. These standards are to be used until such time as national industry standards exist. CLECs that offer xDSL-based service consistent with mutually agreed-upon standards developed by the industry in conjunction with the Commission, or by the Commission in the absence of industry agreement, may order local loops based on agreed-to performance characteristics. SWBT will assign the local loop consistent with the agreed-to spectrum management standards.

- 8.5 In the event that the FCC or the industry establishes long-term standards and practices and policies relating to spectrum compatibility and spectrum management that differ from those established in this Agreement, SWBT and CLEC agree to comply with the FCC and/or industry standards, practices and policies and will establish a mutually agreeable transition plan and timeframe for achieving and implementing such industry standards, practices and policies.
- 8.6 Within thirty (30) days after general availability of equipment conforming to industry standards or the mutually agreed upon standards developed by the industry in conjunction with the Commission, if SWBT and/or CLEC is providing xDSL technologies deployed under Section 4.0 above, or other advanced services for which there is no standard, then SWBT and/or CLEC must begin the process of bringing its deployed xDSL technologies and equipment into compliance with such new standards at its own expense.
- 9.0 **Rates for xDSL Capable Loops and Associated Charges, Billing and Payments of Rates and Charges**
- 9.1 SWBT's rate for xDSL-capable loops, and associated charges, shall be as follows:

	Recurring	Nonrecurring Initial	Additional
2-wire Analog xDSL-capable Loop	\$14.15	\$15.35	\$6.22
2-wire Digital xDSL-capable Loop	\$38.24	\$15.03	\$6.22
4-wire Analog xDSL-capable Loop	\$19.41	\$15.03	\$6.22
4-wire Digital xDSL-capable Loop	\$76.15	\$73.25	\$26.68
Loop Make-Up Information - Mechanized		\$0.00	
Loop Make-Up Information - Manual		\$10.00	

xDSL Cross Connect Charge – Standard:

2-wire Analog	\$1.24	\$4.72	\$4.72
4-wire Analog	\$2.49	\$29.56	\$29.56
2-wire Digital	\$1.24	\$4.72	\$4.72
4-wire Digital	\$6.67	\$39.05	\$34.16

xDSL Cross Connect Charge – Shielded:

2-wire Analog	\$1.24	\$4.72	\$4.72
4-wire Analog	\$2.49	\$29.56	\$29.56
2-wire Digital	\$1.24	\$4.72	\$4.72
4-wire Digital	\$6.67	\$39.05	\$34.16

Note: There is no requirement that a CLEC order shielded cross-connects.

DSL Conditioning Options:

Removal of Repeater	\$0.00	\$0.00	\$0.00
Removal of Bridged Tap and Repeater	\$0.00	\$0.00	\$0.00
Removal of Bridged Tap	\$0.00	\$0.00	\$0.00
Removal of Bridged Tap and Load Coil	\$0.00	\$0.00	\$0.00
Removal of Load Coil	\$0.00	\$0.00	\$0.00

- 9.2 The Parties acknowledge and agree that all of the rates set forth above, are interim and subject to true-up pending the final Order in the xDSL Arbitration. The parties further agree that if the Commission determines that CLEC must pay for the conditioning of xDSL-capable loops and establishes rate(s) for any xDSL Conditioning Options, SWBT shall not seek retroactive true-up from CLEC for any conditioning performed under this Interim Attachment on loops under 15,000 feet.
- 9.3 SWBT will provide CLEC a monthly bill that includes all charges incurred by and credits and/or adjustments due to CLEC for those unbundled elements and other service offerings ordered, established, utilized, discontinued or performed pursuant to this Attachment.
- 9.4 Except as otherwise specifically provided elsewhere in this Agreement, the Parties will pay all rates and charges due and owing under this Attachment within